

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

10 KHANH NIELSON, individually, and on
11 behalf of all others similarly situated,
12 Plaintiffs,
13 vs.
14 THE SPORTS AUTHORITY, and DOES
15 through 100, inclusive,
16 Defendants.

Case No: C 11-4724 SBA

**ORDER (1) DISCHARGING
ORDER TO SHOW CAUSE RE
DISMISSAL AND (2) APPROVING
RENEWED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Dkt. 32

18 Plaintiff Khanh Nielson (“Plaintiff”) brings the instant putative wage and hour class
19 action on behalf of herself and all other non-exempt employees of The Sports Authority
20 (“Defendant”). From 2007 to March 2011, Plaintiff worked for Defendant, a sporting
21 goods retailer, as a non-exempt employee. During that time period, she, along with other
22 non-exempt retail employees, allegedly were subject to off-the-clock “mandatory security
23 checks” of their personal belonging whenever they left the store—even while on a meal or
24 rest break. She filed this putative class action, claiming that Defendant’s policy and
25 concomitant failure to compensate non-exempt employees violates the California Labor
26 Code.

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1 The Court previously denied Plaintiff's motion for preliminary approval due to her
 2 failure to adequately support her various requests. In response to the Court's concerns, the
 3 parties revised their settlement, and on June 7, 2013, filed a "Stipulated Ex Parte
 4 Application" for preliminary approval. Dkt. 32.

5 On July 8, 2013, the Court denied the ex parte application. Dkt. 35. The Court
 6 found that the ex parte application was an improper attempt to circumvent the law and
 7 motion cut-off, which had already lapsed. In addition, the Court expressed concern that
 8 there was no evidence that Plaintiff had been injured by Defendant's security policy,
 9 thereby raising questions as to whether she has standing. In view of these concerns, the
 10 Court issued an order to show cause ("OSC") directing the parties to demonstrate why the
 11 action should not be dismissed for lack of subject matter jurisdiction and/or for failure to
 12 comply with a Court order. See Nielson v. The Sports Authority, No. C 11-4724 SBA,
 13 2013 WL 3388534 (N.D. Cal. July 8, 2013).

14 The parties have now timely responded to the OSC. Dkt. 36, 37. Having read and
 15 considered the papers filed in response to the OSC, as well as the documents initially filed
 16 with the parties' renewed motion for preliminary approval, the Court vacates the OSC and
 17 preliminarily approves the revised class settlement.¹

18 **I. BACKGROUND**

19 The parties are familiar with the facts of this case which are summarized only to the
 20 extent necessary for purposes of the instant matter.

21 On August 22, 2011, the law firm of Scott Cole & Associates ("SCA") filed the
 22 instant action in state court on behalf of Plaintiff, individually, and on behalf of "[a]ll

23 ¹ The Court previously denied the parties' renewed motion for preliminary approval
 24 based on omissions in their factual showing. Given Plaintiff's additional factual proffer,
 25 which is accompanied by a reasonable explanation as to why such information was not
 26 provided earlier, the Court sua sponte reconsiders its denial of the renewed motion for
 27 preliminary approval based on the newly-submitted information. See City of Los Angeles
v. Santa Monica Baykeeper, 254 F.3d 882, 888 (9th Cir. 2001) (holding that a district court
 28 has discretion to reconsider its own prior order sua sponte, as "[a]ll rulings of a trial court
 are subject to revision at any time before the entry of judgment.").

1 persons who are and/or were employed as non-exempt employees by The Sports Authority,
 2 Inc. in one or more of its California retail stores between August 22, 2007 and the present.”
 3 Compl. ¶ 20. The Complaint alleges state law causes of action for: (1) failure to provide
 4 meal and rest periods; (2) failure to pay wages (straight time, overtime, premium pay, and
 5 minimum wage); (3) failure to provide accurate itemized or properly formatted wage
 6 statements; (4) failure to pay wages upon termination or timely upon/after termination;
 7 (5) unfair business practices in violation of Cal. Business and Professions Code section
 8 17200, et seq.; and (6) violation of the California Private Attorney General Act, Cal. Labor
 9 Code section 2699 et seq. The Complaint also seeks waiting time penalties under Labor
 10 Code section 203, pre-judgment interest, and attorneys’ fees and costs. Defendant removed
 11 the action to this Court on September 22, 2011, on the basis of diversity jurisdiction, 28
 12 U.S.C. § 1332(a), and the Class Action Fairness Act, id. § 1332(d)(2). Dkt. 1.

13 In July 2012, the parties mediated their dispute before attorney Mark Rudy and
 14 reached a tentative settlement. Thereafter, on August 31, 2012, Plaintiff filed a motion for
 15 preliminary approval, which sought preliminary approval for a \$2.5 million settlement
 16 (with an unrestricted reversion to Defendant of any unclaimed net settlement funds),
 17 conditional certification of the settlement class under Rule 23(a) and (b)(3), the
 18 appointment of SCA as class counsel, the appointment of Plaintiff as the class
 19 representative, authorization for Plaintiff’s counsel to solicit bids from prospective claims
 20 administrators and permission to disseminate notice to Class Members. Dkt. 24.

21 On November 27, 2012, the Court denied Plaintiff’s motion for preliminary approval
 22 on several grounds. Nielson v. The Sports Authority, No. C 11-4724 SBA, 2012 WL
 23 5941614 (N.D. Cal. Nov. 27, 2012), Dkt. 28. With regard to the matter of conditional class
 24 certification, the Court found that Plaintiff had failed to carry her burden under Rule 23(a)
 25 and (b)(3) with regard to commonality, typicality, adequacy of representation,
 26 predominance and superiority. Id. at *3-5. Much of the Court’s concern arose as a result of
 27 Plaintiff’s failure to specify the nature of her position and duties as well as the alleged
 28 policy that formed the basis of her claims. The Court further concluded that Plaintiff had

1 failed to provide sufficient information for an assessment of whether the proposed
 2 settlement is reasonable. Id. at *6. Finally, the Court expressed concerns regarding the
 3 proposed class notice. Id.

4 On June 7, 2013, a month after the law and motion cut-off had lapsed, the parties
 5 submitted a 24-page document entitled, “Stipulated Ex Parte Application for Order:
 6 (1) Granting Preliminary Approval of Class Action Settlement; (2) Granting Conditional
 7 Certification of the Settlement Class; (3) Appointing Class Counsel, Class Representative
 8 and Claims Administrator; and (4) Approving First Amended Complaint, Class Notice,
 9 Claim Form, Request For Exclusion Form.” Dkt. 32. In an effort to rectify the deficiencies
 10 of her first motion, Plaintiff modified certain of the settlement terms² and submitted a
 11 declaration to clarify her job titles and the nature of the security policy at issue. However,
 12 Plaintiff’s declaration was silent as to whether she personally experienced or was harmed
 13 by Defendant’s security check policy. Indeed, all of her allegations in that declaration were
 14 made on information and belief, suggesting that she had not.

15 The Court construed the parties’ ex parte application as a renewed motion for
 16 preliminary approval and denied said motion on two grounds. First, the Court found that
 17 the parties’ renewed motion was untimely because they neither sought nor obtained leave to
 18 extend the law and motion cut-off. Second, the Court concluded that there were serious
 19 concerns regarding whether Plaintiff had standing to maintain the action. Accordingly, the
 20 Court issued an OSC directing the parties to show cause why the instant action should or
 21 should not be dismissed for lack of standing, or alternatively, for violation of a Court order,
 22 pursuant to Federal Rule of Civil Procedure 41(b). See Order Denying Renewed Motion
 23 for Preliminary Approval of Class Action Settlement and Order to Show Cause Re
 24 Dismissal (“OSC”) Dkt. 35.

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26 ² In response to the Court’s observations in its Order denying the initial motion for
 27 preliminary approval, the parties revised the terms of the settlement by replacing the
 28 reversion provision with a stipulation that at least 80% of the net settlement proceeds will
 be distributed to the class. In addition, the parties extended the period for Class Members
 to submit a claim.

1 On July 15, 2013, and July 19, 2013, Plaintiff and Defendant, respectively, timely
 2 filed responses to the OSC. Both agree that Plaintiff was personally subjected to the
 3 security policy at issue and that she has standing to pursue the instant claims on behalf of
 4 herself and the class. They also contend that the failure to seek leave to file a renewed
 5 motion for preliminary approval was inadvertent. As such, both parties request that the
 6 Court discharge the OSC and preliminarily approve the revised class settlement.

7 **II. DISCUSSION**

8 **A. ORDER TO SHOW CAUSE**

9 The threshold question presented is whether the parties' responses to the OSC
 10 adequately address the Court's concerns regarding Plaintiff's Article III standing. They
 11 have. Constitutional standing is established by showing: (1) an injury in fact, which is a
 12 violation of a protected interest, that is both (a) concrete and particularized, and (b) actual
 13 or imminent; (2) a causal connection between the injury and the defendant's conduct; and
 14 (3) a likelihood that the injury will be redressed by a favorable decision. Lujan v.
 15 Defenders of Wildlife, 504 U.S. 555, 560 (1992). The standing requirement applies to class
 16 representatives who must, in addition to being a member of the class she purports to
 17 represent, establish the existence of a case or controversy. O'Shea v. Littleton, 414 U.S.
 18 488, 494 (1974). A "class representative must be part of the class and possess the same
 19 interest and suffer the same injury as the class members." Gen. Tel. Co. of Sw. v. Falcon,
 20 457 U.S. 147, 156 (1982) (quotation omitted). The party seeking relief "bears the burden
 21 of showing that he has standing for each type of relief sought." Summers v. Earth Island
 22 Inst., 555 U.S. 488, 493 (2009).

23 In its OSC, the Court expressed concern that Plaintiff may not have suffered the
 24 same injury as the class, let alone any injury at all, as a result of Defendant's security
 25 policy. OSC at 7-9. That concern arose from the supporting declaration of Plaintiff, which
 26 was devoid of any allegation that she was personally subjected to the policy at issue. In her
 27 response to the OSC, Plaintiff acknowledges that her declaration lacked the requisite
 28 specificity and failed to expressly allege that she was subjected to and injured by

1 Defendant's policy. Pl.'s Response at 9, Dkt. 36. She explains, however, that the omission
2 of such information was due in large part to Defendant's insistence that Plaintiff avoid
3 making any statements regarding its liability for such policy. Id. Notably, Defendant
4 acknowledges as much in its brief. Def.'s Response at 2, Dkt. 37. In addition, Plaintiff has
5 now filed a supplemental declaration which confirms that she, like other of Defendant's
6 retail non-exempt employees, in fact, was subject to and injured by Defendant's security
7 policy. Nielson Decl. ¶¶ 6-14, Dkt. 36-2. The Court is therefore satisfied that Plaintiff has
8 satisfied her burden of establishing standing.

9 The second issue raised in the OSC pertained to the parties' apparent attempt to
10 circumvent the law and motion deadline set in the Court's Order for Pretrial Preparation.
11 OSC at 9-10. Plaintiff indicates that the parties submitted a renewed motion for
12 preliminary approval in the form of a joint ex parte application, as opposed to a noticed
13 motion, because "the parties understood (apparently mistakenly), that the motion cut-off
14 did not apply to settlement efforts." Pl.'s Response at 4. According to Plaintiff, since a
15 settlement may be reached at any point prior to judgment, "it seemed logical that a request
16 for approval could be brought at any time." Id. Defendant likewise indicates that the
17 parties believed that a motion to approve a settlement could be brought at will, particularly
18 given that the final, mandatory settlement conference had been scheduled to take place after
19 the law and motion cut-off. Def.'s Response at 3.

20 The parties' explanation for filing an untimely, renewed motion for preliminary
21 approval is unavailing. While it is true that a settlement requiring judicial approval may be
22 reached after a law and motion cut-off, it does not logically follow that such deadline is
23 inapplicable to motions to approve a settlement. As the Ninth Circuit has explained, "[a]
24 scheduling order is not a frivolous piece of paper, idly entered, which can be cavalierly
25 disregarded by counsel without peril." Johnson v. Mammoth Recreations, Inc., 975 F.2d
26 604, 610 (9th Cir. 1992) (internal quotations omitted). Thus, upon revising their settlement,
27 the appropriate course of action would have been for the parties to inform the Court of the
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1 recent developments regarding the settlement, and to request leave to modify the pretrial
 2 order in order to accommodate a renewed motion for preliminary approval.

3 The above notwithstanding, the “drastic” sanction of dismissal of the action under
 4 Rule 41(b) for failure to comply with a court order is not warranted in this instance.
 5 Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (setting forth factors for dismissal
 6 under Rule 41(b) and directing court’s to consider alternatives to dismissal, if warranted).
 7 Rather, the Court finds that interests of the class and the public will be better served by
 8 consideration of the proposed, revised settlement, as opposed to the dismissal of the action
 9 for failure to comply with a court order. Accordingly, the Court discharges the OSC and
 10 now considers the parties’ renewed motion for preliminary approval, taking into account
 11 the supplemental information provided with Plaintiff’s response to the OSC.

12 **B. PRELIMINARY APPROVAL**

13 Federal Rule of Civil Procedure 23(e) requires the court to determine whether a
 14 proposed settlement is ““fundamentally fair, adequate, and reasonable.”” Staton v. Boeing
 15 Co., 327 F.3d 938, 952 (9th Cir. 2003) (quoting Hanlon v. Chrysler Corp., 150 F.3d 1011,
 16 1026 (9th Cir. 1998)). “The purpose of Rule 23(e) is to protect the unnamed members of
 17 the class from unjust or unfair settlements affecting their rights.” In re Syncor ERISA
 18 Litig., 516 F.3d 1095, 1100 (9th Cir. 2008) (citation omitted). “The initial decision to
 19 approve or reject a settlement proposal is committed to the sound discretion of the trial
 20 judge.” Officers for Justice v. Civil Serv. Comm’n, 688 F.2d 615, 625 (9th Cir. 1982).

21 To make a fairness determination, the district court must balance a number of
 22 factors, including: (1) the strength of plaintiff’s case; (2) the risk, expense, complexity, and
 23 likely duration of further litigation; (3) the risk of maintaining class action status
 24 throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery
 25 completed, and the stage of the proceedings; (6) the experience and views of counsel;
 26 (7) the presence of a governmental participant; and (8) the reaction of the class members to
 27 the proposed settlement. See Molski v. Gleich, 318 F.3d 937, 953 (9th Cir. 2003). In
 28 conducting this evaluation, it is neither for the court to reach any ultimate conclusions

1 regarding the merits of the dispute, nor to second guess the settlement terms. See Officers
 2 for Justice v. San Fran. Civ. Serv. Comm'n, 688 F.2d 615, 625 (9th Cir. 1982).

3 Given that some of the aforementioned “fairness” factors cannot be fully assessed
 4 until the Court conducts the final approval hearing, “a full fairness analysis is unnecessary
 5 at this stage.” Alberto v. GMRI, Inc., 252 F.R.D. 652, 665 (E.D. Cal. 2008) (internal
 6 quotations and citation omitted). Rather, preliminary approval of a settlement and notice
 7 to the proposed class is appropriate: if “[1] the proposed settlement appears to be the
 8 product of serious, informed, noncollusive negotiations, [2] has no obvious deficiencies,
 9 [3] does not improperly grant preferential treatment to class representatives or segments of
 10 the class, and [4] falls within the range of possible approval....” In re Tableware Antitrust
 11 Litig., 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (citing Manual for Complex Litigation,
 12 Second § 30.44 (1985)).

13 The factors set forth in In re Tableware Antitrust Litigation weigh in favor of
 14 preliminarily approving the settlement. First, the settlement resulted from non-collusive
 15 negotiations; i.e., a mediation before Mark Rudy, a respected employment attorney and
 16 mediator. Second, there are no obvious deficiencies. To the contrary, the settlement
 17 confers tangible monetary benefits to the class under which at least 80% of the net
 18 settlement proceeds will be paid to Class Members. There is no indication that the
 19 settlement improperly grants preferential treatment to class representatives or segments of
 20 the class. Finally, based on its experience with similar actions, the Court finds that the
 21 settlement appears to fall within the range of possible approval.

22 **C. CONDITIONAL CLASS CERTIFICATION**

23 Plaintiff seeks conditional certification of a settlement class under Rule 23(a) and
 24 (b)(3). A class action will only be certified if it meets the four prerequisites identified in
 25 Federal Rule of Civil Procedure 23(a) *and* additionally fits within one of the three
 26 subdivisions of Federal Rule of Civil Procedure 23(b). Amchem Prods., Inc. v. Windsor,
 27 521 U.S. 591, 614 (1997). “The four requirements of Rule 23(a) are commonly referred to
 28 as ‘numerosity,’ ‘commonality,’ ‘typicality,’ and ‘adequacy of representation’ (or just

1 ‘adequacy’), respectively.” United Steel, Paper & Forestry, Rubber, Mfg. Energy, Allied
 2 Indus. & Serv. Workers Int’l Union, AFL-CIO v. ConocoPhillips Co., 593 F.3d 802, 806
 3 (9th Cir. 2010). Certification under Rule 23(b)(3) is appropriate where common questions
 4 of law or fact predominate and class resolution is superior to other available methods. Fed.
 5 R. Civ. P. 23(b)(3). Although a district court has discretion in determining whether the
 6 moving party has satisfied each Rule 23 requirement, the court must conduct a rigorous
 7 inquiry before certifying a class. Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 161 (1977);
 8 Ellis v. Costco Wholesale Corp., 657 F.3d 970, 981 (9th Cir. 2011).

9 **1. Rule 23(a)**

10 **a) *Numerosity***

11 Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is
 12 impracticable.” Fed. R. Civ.P. 23(a)(1). The class also must be “ascertainable.” Mazur v.
 13 eBay Inc., 257 F.R.D. 563, 567 (N.D. Cal. 2009). In its prior order, the Court found that
 14 Plaintiff provided adequate support to satisfy Rule 23’s numerosity and ascertainability
 15 requirements. See Order Denying Motion for Preliminary Approval at 4-5, Dkt. 28.

16 **b) *Commonality***

17 “Commonality focuses on the relationship of common facts and legal issues among
 18 class members.” Id. Rule 23(a)(2) should be construed permissively, meaning that “[a]ll
 19 questions of fact and law need not be common to satisfy the rule. The existence of shared
 20 legal issues with divergent factual predicates is sufficient, as is a common core of salient
 21 facts coupled with disparate legal remedies within the class.” Id. (quoting Hanlon, 150
 22 F.3d at 1019).

23 The Court previously found that Plaintiff’s showing of commonality was deficient
 24 because she had failed to present sufficient information regarding her job duties, thereby
 25 impeding a determination of whether issues of fact and law were common to the class. Dkt.
 26 28 at 5. In her supplemental declaration, Plaintiff clarifies that her and the Class Members’
 27 job duties are not pertinent to the claims at issue, since *all* non-exempt employees were
 28 subject to the security inspection policy. With that clarification, the Court is now satisfied

1 that Plaintiff has sufficiently met the requirements for commonality for purposes of
2 conditional class certification.

c) *Typicality*

4 Rule 23(a)(3) requires that “the claims or defenses of the representative parties be
5 typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). “The purpose of
6 the typicality requirement is to assure that the interest of the named representative aligns
7 with the interests of the class.” Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir.
8 1992).

9 In her prior motion for preliminary approval, Plaintiff alleged, without elaboration,
10 that “[t]ypicality is met here as the claims of the Settlement Class are based on the same
11 legal and factual claims as that of the Plaintiff.” Dkt. 28 at 6. The Court found Plaintiff’s
12 conclusory assertion insufficient to establish typicality. However, as discussed above,
13 Plaintiff has now clarified that she and fellow Class Members were not properly
14 compensated due to Defendant’s policy of requiring them to undergo off-the-clock security
15 inspections. This suffices for purposes of meeting the typicality requirement. See Dilts,
16 267 F.R.D. at 633.

d) Adequacy

Finally, Rule 23(a)(4) permits certification of a class action only if “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “To determine whether named plaintiffs will adequately represent a class, courts must resolve two questions: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” Ellis, 657 F.3d at 985.

24 The Court previously found that it was unable to assess the aforementioned issues
25 due to Plaintiff’s failure to provide information regarding the nature of her job position.
26 Dkt. 28 at 6. However, Plaintiff’s clarification of the theory of her case adequately
27 assuages the Court’s concerns. As such, the Court finds that there is no indication that
28 there is any conflict of interest between the class and Plaintiff and/or her counsel. In

1 addition, the record shows that Plaintiff and her counsel have been vigorously litigating this
 2 case in furtherance of the interests of the class.

3 **2. Rule 23(b)(3)**

4 A class may be certified under Rule 23(b)(3) if the Court finds that: (1) “the
 5 questions of law or fact common to class members predominate over any questions
 6 affecting only individual members,” and (2) “a class action is superior to other available
 7 methods for fairly and efficiently adjudicating the controversy.” These requirements are
 8 called the “predominance” and “superiority” requirements. See Hanlon, 150 F.3d at 1022-
 9 23.

10 In its prior order, the Court found that Plaintiff’s vague references to company-wide
 11 policies were insufficient to satisfy the predominance and superiority requirements. Dkt.
 12 28 at 7. Plaintiff has rectified this deficiency by supplying the Court with the details of
 13 Defendant’s alleged policy of failing to compensate non-exempt employees for time spent
 14 having their bags inspected while on a meal or rest break. Claims based on this type of
 15 commonly-applied policy are generally sufficient for purposes of satisfying the
 16 requirements of Rule 23(b)(3). See, e.g., Wright v. Linkus Enters., Inc., 259 F.R.D. 468,
 17 473 (E.D. Cal. 2009) (finding predominance, despite minor factual difference between
 18 individual class members, where the case involved “alleged policies that required class
 19 members to work without compensation, meal and rest periods, and/or reimbursement for
 20 expenses”); In re Wells Fargo Home Mortg. Overtime Pay Litig., 527 F. Supp. 2d 1053,
 21 1065-68 (N.D. Cal. 2007) (finding predominance where, as a general matter, the
 22 defendant’s policy and practice regarding compensation and exemption was uniform for all
 23 putative class members); Gardner v. GC Servs., LP, No. 10cv0997-IEG (CAB), 2011 WL
 24 5244378, at *5 (S.D. Cal. Nov. 1, 2011) (finding that Rule 23(b)(3) was satisfied where
 25 “the claims stem from GC Services’ alleged uniform policy of requiring account
 26 representative to perform certain pre-shift, post-shift, and lunch time tasks without
 27 compensation”).

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1 In sum, the record is sufficient to support conditional certification of the class under
 2 Rule 23(a) and (b)(3).

3 **D. CLASS NOTICE**

4 Rule 23 provides that where a proposed settlement has been reached by the parties,
 5 the “court must direct notice in a reasonable manner to all class members who would be
 6 bound by the proposal.” Fed. R. Civ. P. 23(e)(1).³ Notice must generally describe the
 7 terms of the settlement in sufficient detail to alert those with adverse viewpoints to
 8 investigate and to come forward and be heard. Mendoza v. United States, 623 F.2d 1338,
 9 1352 (9th Cir. 1980). In order to satisfy due process considerations, notice must be
 10 “reasonably calculated, under all the circumstances, to apprise interested parties of the
 11 pendency of the action and afford them an opportunity to present their objections. Silber v.
 12 Mabon, 18 F.3d 1449, 1454 (9th Cir. 1994).

13 In connection with the first motion for preliminary approval, the Court expressed
 14 concern that the parties’ agreement only afforded Class Members thirty days to submit their
 15 claim forms. The parties have since revised the settlement agreement to provide for a sixty
 16 day claims period. This is sufficient to address the Court’s concerns that the notice period
 17 is too short. However, the Class Notice should be modified to indicate that objections must
 18 be *post-marked* by the specified deadline, as opposed to being “filed with the Court” by a
 19 particular date. Dkt. 32-2 at 34. In addition, the notice also should state that any objector
 20 desiring to be heard at the fairness hearing must contemporaneously request permission to
 21 appear at the hearing, and that the objector will not be allowed to present any argument or
 22 comment at the fairness hearing unless he or she has timely objected to the settlement and
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24 ³ For classes certified under Rule 23(b)(3), the Court must direct to class members
 25 “the best notice practicable under the circumstances, including individual notice to all
 26 members who can be identified through reasonable effort.” Id. 23(c)(2)(B). The notice
 27 must “clearly and concisely state in plain, easily understood language”: (i) the nature of the
 28 action; (ii) the definition of the class certified; (iii) the class claims, issues or defenses;
 (iv) that a class member may enter an appearance through an attorney if the member so
 desires; (v) that the court will exclude from the class any member who requests exclusion;
 (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class
 judgment on members under Rule 23(c)(3). Id.

1 accompanied said objection with a request to appear. See McClellan v. SFN Group, Inc.,
2 No. C 10-5972 SBA, 2012 WL 2367905, *5 (N.D. Cal. June 21, 2012). The Class
3 Notice shall be modified accordingly.

4 **III. CONCLUSION**

5 For the reasons stated above,

6 **IT IS HEREBY ORDERED THAT** the parties' renewed motion for preliminary
7 approval is **GRANTED**, as follows:

8 1. Pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), the Court
9 conditionally certifies, for settlement purposes only, a proposed Settlement Class defined as
10 follows:

11 All persons who are and/or were employed as non-exempt retail
12 employees by TSA Stores, Inc. d/b/a Sports Authority, in the
State of California from August 22, 2007 through the present.

13 2. Plaintiff Khanh Nielson is appointed as class representative.

14 3. Scott Cole & Associates, APC, is appointed as Class Counsel.

15 4. Class Counsel is granted permission to obtain bids from various companies
16 for the administration of this Settlement. Upon its selection of a company, Class Counsel
17 shall forthwith file an administrative motion and proposed order to appoint said company as
18 the Claims Administrator. The administrative motion shall identify the name of the
19 proposed administrator, along with a brief summary of its qualifications. Said motion shall
20 be filed within twenty-one (21) days of the date this Order is filed.

21 5. Within seven (7) days of the date this Order is filed, Plaintiff shall submit a
22 revised Class Notice which addresses the Court's concerns, as set forth *supra*. The revised
23 Class Notice shall be redlined and/or highlighted to clearly indicate the modifications to the
24 original proposed Class Notice. In addition, Plaintiff shall accompany the revised notice
25 with a proposed order approving the same.

26 6. The Court directs mailing of the Class Notice, Claim Form and Request for
27 Exclusion Form (collectively referred to as the "Class Notice Package") by United States

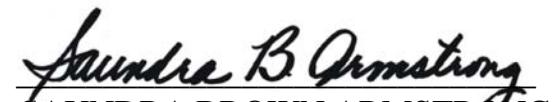
1 First Class Mail, in accordance with the Implementation Schedule set forth below. Plaintiff
 2 Class Members shall not be required to pay return postage on the Claim Form and the cost
 3 of such postage shall be included in the fees and costs of the Administrator. The Court
 4 finds that the deadlines selected in the Implementation Schedule meet the requirements of
 5 due process and provide the best notice practicable under the circumstances.

6 7. The Court orders the following Implementation Schedule for further
 7 proceedings:

ACTION	DEADLINE
Defendant to provide Claims Administrator with the name, last known home address, home telephone number, email address, social security number and data pertaining to the dates of employment of each Class Member	10 days after Court approves revised Class Notice
Claims Administrator mails Class Notice Package to Class Members	10 days after receipt by Claims Administrator of list of Class Members from Defendant
Deadline for Class Members to submit Claim Form/Exclusion Form/Objections/Request to Appear	60 days after Class Notice Package is mailed (or not more than 21 calendar days after the date the Class Notice is re-mailed)
Plaintiff to file motion for final approval and judgment, for reimbursement of attorneys' fees and litigation costs, for reimbursement of costs associated with the claims administration of this settlement, an enhancement award to the Representative Plaintiff for her service to the Class, as well as a declaration from the Claims Administrator showing its efforts to mail the Class Notice Package. (NOTE: the motion shall include a section addressing any objections)	35 days before Fairness Hearing
Fairness Hearing	December 17, 2013 at 1:00 p.m.

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1 IT IS SO ORDERED.
2 Dated: July 26, 2013
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SAUNDRA BROWN ARMSTRONG
United States District Judge